

IN THE MATTER OF:

PROFESSIONAL MORTGAGE  
BANKERS, INC.

Respondent

\* BEFORE THE  
\* MARYLAND COMMISSIONER  
\* OF  
\* FINANCIAL REGULATION  
\* Case No. DFR-FY2010-203

\* \* \* \* \*

**FINAL ORDER**

**Statement of the Case**

The hearing on the above-captioned matter was held on March 29, 2010, and heard by the Deputy Commissioner of Financial Regulation, Mark Kaufman (“Deputy Commissioner”). This matter was scheduled for a hearing as a result of a Re-Notice of Hearing (“Notice”), dated February 17, 2010 (Exhibit CFR 1) and Corrected Charge Letter and Notice of Hearing (“Charge Letter”), dated January 6, 2010, (Exhibit CFR 3) issued by the Office of the Commissioner of Financial Regulation (the “Commissioner”) to Professional Mortgage Bankers, Inc. (“Respondent”), a mortgage lender licensed at times relevant to this Final Order (“Order”) pursuant to Md. Code Ann., Fin. Inst. (“FI”) § 11-501 *et seq.*

The Charge Letter alleges that Respondent violated FI § 11-515(c), and the Code of Maryland Regulations (“COMAR”) 09.03.06.23, by failing to pay to the Commissioner fees owed to the Commissioner for a statutorily required examination conducted of the business of Respondent (the “Examination”). FI § 11-515(a). The Charge Letter further states that

Respondent may be subject to sanctions by the Commissioner for the alleged violations of law, including suspension or revocation of Respondent's license and civil penalties pursuant to FI § 11-517(a)(4) and (5); FI § 2-115(b).

Respondent did not appear at the hearing, but proper service of the Notice and Charge Letter being established, the hearing proceeded pursuant to COMAR 09.01.02.09. Jedd R. Bellman, Staff Attorney, appeared as presenter of evidence on behalf of the Office of the Commissioner. Christopher J. Young, Assistant Attorney General, served as counsel to the Deputy Commissioner. The proceedings were electronically recorded.

### **Statement of Facts**

From the testimony offered by George Kinsel, Director of Compliance for the Office of the Commissioner, and the exhibits presented, and with the opportunity to observe the demeanor of the witness and to assess his credibility, the Deputy Commissioner finds the relevant facts to be these:

1. Respondent was licensed under the Maryland Mortgage Lender Law ("MMLL"), (FI § 11-501 *et seq.*) during those times relevant to the examination of the business of Respondent by the Commissioner described in paragraph 4 of this Order (Exhibits CFR 8 and 9).
2. Respondent's mortgage lender license expired on December 31, 2009 (Exhibit CFR 8).

3. Respondent was properly served with the Notice, giving thirty days notice of the hearing, as evidenced by: the Notice (Exhibit CFR 1), the certified mail receipt (Exhibit CFR 2), the Affidavit of Service (Exhibit CFR 7), and the Commissioner's AS 400 computer print-out of Respondent's licensing information showing Respondent's address (Exhibit CFR 8).

4. Respondent was subject to examination by the Commissioner under FI § 11-515(a) and was examined between February 18 and March 12, 2009, (Exhibit CFR9).

5. Respondent was charged by the Commissioner the amount of \$1,468.75 for the Examination.

6. Respondent has failed to pay the amount due, despite being sent:

a. An original invoice sent to Respondent by regular US mail on April 21, 2009, (Exhibit CFR 10);

b. An overdue notice sent to Respondent by email on May 22, 2009, (Exhibit CFR 11);

c. A second overdue notice sent to Respondent by email on June 6, 2009, (Exhibit CFR 12); and

d. A dunning letter dated November 9, 2009, sent by Assistant Attorney General, W. Thomas Lawrie, via regular US mail demanding payment of the past-due fee (Exhibit CFR 13).

7. The amount due for the Examination remained unpaid as of the date of the hearing in this case. (Exhibit CFR 15).

### **Conclusions of Law**

Based on the Findings of Fact, the Deputy Commissioner concludes that Respondent has violated FI § 11-515(c), and the COMAR 09.03.06.23, by failing to pay to the Commissioner fees owed to the Commissioner for the Examination required under FI § 11-515(a). The Deputy Commissioner also concludes that Respondent is subject to sanctions under FI § 11-517(a) and (c), including the suspension or revocation of Respondent's license and a civil penalty not exceeding \$5,000 for each violation, because Respondent (i) violated a provision of this MMLL and a regulation adopted under it (FI § 11-517(a)(4)), and (ii) otherwise demonstrated unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently (FI § 11-517(a)(5)). Moreover, the Commissioner has authority under FI § 2-115(b) to suspend or revoke Respondent's license, or to impose a civil penalty up to the permissible amount.

An issue arises as to whether the Commissioner may revoke Respondent's license when it had already expired prior to the hearing in this case. The Deputy Commissioner concludes that the Commissioner does have the authority to revoke Respondent's license notwithstanding the fact that it had expired at the time of the hearing. The voluntary surrender or expiration of a license prior to a hearing date does not deprive the

Commissioner of the authority to revoke or suspend a license. To hold otherwise would cause the incongruous result that a licensee charged with regulatory violations could avoid sanction, including license suspension or revocation, merely by surrendering the license or allowing it to lapse. *See Nicoletti v. State Board of Vehicle Mfrs., Dealers and Salespersons*, 706 A.2d 891 (Pa. Cmwlth. 1998) (holding that respondent licensee had a right to renew license which the board could revoke); *see also Wise v. Ohio Motor Vehicle Dealer Bd.*, 106 Ohio App. 3d 562 (1995) (holding that voluntary surrender of license prior to hearing date does not deprive licensing agency of authority to revoke or suspend license).

#### **Final Order**

In consideration of the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** by the Deputy Commissioner that:

Respondent's Mortgage Lenders License is **REVOKED**; and it is further **ORDERED** that:

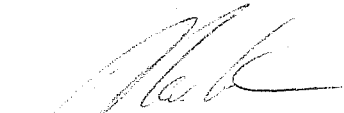
Respondent shall immediately pay to the Commissioner the past-due Examination Fee of \$1,468.75 by delivering the payment to:

The Commissioner of Financial Regulation  
Jessica Wiener, Paralegal  
500 North Calvert Street, Suite 406  
Baltimore, Maryland 21202

**RESPONDENT IS ADVISED:** Pursuant to State Govt. Art., Section 10-222, any party who is aggrieved by the Commissioner's decision, may file a petition for judicial review with the Circuit Court for the county where any party resides or has a principal

place of business. Such petition must be filed within 30 days after Applicant's receipt of this Order (Md. Rule 7-203). The filing of a petition for judicial review does not automatically stay the enforcement of the Final Order.

**COMMISSIONER OF FINANCIAL REGULATION**

6/3/10 By:   
Date Mark Kaufman, Deputy Commissioner